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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,924	06/18/2002	Ulrich Hege	30051/37969	1473

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EXAMINER

HIRL, JOSEPH P

ART UNIT	PAPER NUMBER
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2121

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/009,924	<b>Applicant(s)</b> HEGE, ULRICH	
	<b>Examiner</b> Joseph P. Hirl	<b>Art Unit</b> 2121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2002 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This Office Action is in response to an AMENDMENT entered July 16, 2004 for the patent application 10/009,924 filed on June 18, 2002.
2. The First Office Action of March 8, 2004 is fully incorporated into this Final Office Action by reference.

### ***Status of Claims***

3. Claims 2-10 are amended. Claim 1 is cancelled. Claims 2-11 are pending.

### ***Drawings***

4. The drawings are objected to because of the following:

Patent application require disclosure in the specification and drawings of the specific nature of the invention. Drawings are an important part of the disclosure since drawings identify technical details. If the drawings are arbitrary in nature as stated in the applicants reply dated July 16, 2004, p 6, line 20 and further indicated in Figs. 2-9, then it can only be presumed that one of ordinary skill in the art will have to spend undue amounts of time experimenting to replicate the invention which is unacceptable. Stripper @ Fig. 3 provides appropriate description of units.

These objections must be corrected.

### ***Specification***

5. The specification is objected to because of the following:

Related to Figs. 2-9, and p 9, l 13-25 continuing to p 10, l 1-3, identify time in minutes for the abscissa. However, there is no reason given for the common axis values representing flow and height in the top diagram. Albeit there is some justification given by choosing arbitrary units, similar problems exist in discussion of the middle and bottom graphs. Arbitrary units introduce the element of uncertainty and the consequence of indefiniteness to the specification. Stripper @ Fig. 3 provides appropriate description of units

These objections must be corrected.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 2-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Stripper et al (U. S. Patent 4,990346, referred to as **Stripper**).

#### **Claim 2**

Stripper anticipates controlling a control valve (16) and a height of a raking machine (5) in dependence upon a difference between a desired wort flow and an

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actual wort flow (**Stripper**, c 6, l 60-64); opening further the control valve (16) and lowering the raking machine (5) if the desired wort flow is less than the actual wort flow and closing the control valve (16) and lifting the ranking machine (5) if the target wort flow is more than the actual work flow (**Stripper**, c 4, l 29-37; c 6, l 60-64; c 7, l 6-33; EN: this is an automatic process following Stripper @ Fig. 3 wherein the rake is positioned as a function of differential pressure, i.e. difference in flow rate); reducing the target wort flow if an increase in the actual wort flow is not to be caused by an opening of the control valve (16) or lowering of the raking machine (5) (**Stripper**, c 4, l 62-67; c 5, l 1-2; EN: this is an automatic process); and setting the wort flow and the height of the raking machine (5) in dependence upon the turbidity of the outflowing wort so that an increase in turbidity will result in a lowering of the raking machine and a lower target wort flow (**Stripper**, c 4, l 62-67; c 5, l 1-2; EN: this is an automatic process; see discussion in Para 13).

**Claim 3**

Stripper anticipates and taking into account both the change with time of the position of the control valve (16) as an input variable (**Stripper**, c 5, l 19-39; EN: this is an automatic process; if the gradient related to flow changes substantially over a short period of time, an appropriate cut will be automatically initiated) .

**Claim 4**

Stripper anticipates increasing the inflow of sparge water above the actual wort flow, if the actual wort flow remains below the target wort flow during a second wort, and reducing the inflow of sparge water as soon as the actual wort flow reaches the target

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wort flow (**Stripper**, c 5, l 19-39; EN: para 2 applies; the run-off wort is in essence the second wort).

#### **Claim 5**

Stripper anticipates lowering a level in a lauter vessel (19), if the actual wort flow remains below the target wort flow (**Stripper**, c 5, l 19-39; c 6, l 60-64; EN: para 2 applies; the run-off wort is in essence the second wort).

#### **Claim 6**

Stripper anticipates the sparge water quantity is determined as a function of the spent grains resistance (**Stripper**, c 6, l 27-43).

#### **Claim 7**

Stripper anticipates taking into account, for triggering a deep cut, the position of the control valve (16), the actual wort flow (15), the height of the raking machine (5) and the turbidity (**Stripper**, c 5; l 27-43; c 6, l 60-64).

#### **Claim 8**

Stripper anticipates, the raking machine (5) if moved at least once during a second wort to a position lower than the lowest position to which the raking machine (5) has been moved during the first wort (**Stripper**, c 5; l 19-43; c 6, l 27-64; EN: para 16 applies).

#### **Claim 9**

Stripper anticipates setting the lautered amount of first wort, as a function of the spent grains resistance during lautering of the first wort (**Stripper**, c 6, l 19-64).

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**Claim 10**

Stripper anticipates the time at which trub is added during the second wort is determined as a function of the spent grains resistance during the second wort (Stripper, c 6, l 19-64).

**Claim 11**

Stripper anticipates lowering a level in the lauter vessel occurs at the end of lautering a first wort (Stripper, c 6, l 27-64; EN: this is an automatic process).

***Response to Arguments***

8. The objections to the drawings concerning indefiniteness of disclosure remains.
9. The objections to the specification concerning indefiniteness of disclosure remains.
10. The objection to claim 2 is withdrawn.
11. The rejection of claim 1 under 35 USC 101 is withdrawn.
12. The claim objections under 35 USC 112, first and second paragraphs, are withdrawn.
13. Applicant's arguments filed on July 16, 2004 related to rejection of claims 2-11 under 35 USC 102(e) have been fully considered but are not persuasive.

In reference to Applicant's argument:

Claim 2 as amended, as well as the claims dependent therefrom, specifies inter alia, "opening the control valve (16) and lowering the raking machine (5) if the desired wort flow is less than the actual wort flow and closing the control valve (16) and lifting the ranking machine (5) if the target wort flow is more than

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the actual wort flow," and "setting the target wort flow and the height of the raking machine (5) in dependence upon the turbidity of the outflowing wort so that an increase in turbidity will result in a lowering of the raking machine and a lower target wort flow." Strippler fails to disclose such elements.

Examiner's response:

Para 16. applies. Stripper @ c 6, l 60-67 ; c 7, l 1-5 identifies the methodology of rake setting as a function of differential pressure. Differential pressure is related to flow rate in that the pressure will be high when the flow rate is low and conversely, the pressure will be low when the flow rate is high. Consequently, Stripper does indeed adjust the raking height based on wort flow rate. Concerning valve settings, Fig. 1 identifies various valves and Stripper @ c 4, l 29-37 addresses valve 15 which is a regulating and control valve. Stripper @ c 7, l 6-33 to include Fig. 3 sets forth the relationships involving turbidity and position of rake.

In reference to Applicant's argument:

Strippler discloses a method and apparatus for controlling the position of a rotating rake in a lauter tub according to a flow rate or a differential pressure relating the lauter tub, and for controlling the speed of the rotating rake in a lauter tub according to a turbidity value. More specifically, when a drop in the flow rate or an increase in the differential pressure occurs, the rake is moved to a lower position, whereas when there is an increase in the flow rate or a drop in the differential pressure, the rake is moved to a higher position. Similarly, the rotational speed of the rake may be increased or decreased in response to and depending on the turbidity. As such, the rake disclosed in Strippler is vertically moved dependent on the rate of flow and is reduced or increased in speed dependent on the turbidity.

Strippler, however, does not disclose controlling a control valve and a height of a raking machine in dependence upon a difference between a desired wort flow and an actual wort flow, as recited in claim 2, as amended. As a matter of fact, Strippler does not disclose controlling a control valve in dependence of any parameter, never mind the difference in wort flows. Additionally, Strippler does not disclose setting the height of the raking machine in dependence upon the turbidity but, as mentioned previously, discloses setting the rotational speed of the rake in dependence upon the turbidity.

Examiner's response:

Stripper @ c 4, l 29-37 and c 7, l 23-25 apply.

***Examination Considerations***

14. The claims and only the claims form the metes and bounds of the invention.

"Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

15. Examiner's Notes are provided to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

16. Examiner's Opinion: Paras 14. and 15. apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

***Conclusion***

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. Claims 2-11 are rejected.

***Correspondence Information***

20. Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner, Joseph P. Hirl, whose telephone number is (703) 305-1668. The Examiner can be reached on Monday – Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the

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Examiner's supervisor, Anthony Knight can be reached at (703) 308-3179.

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,

Washington, D. C. 20231;

or faxed to:

(703) 746-7239 (for formal communications intended for entry);

or faxed to:

(703) 746-7290 (for informal or draft communications with notation of  
"Proposed" or "Draft" for the desk of the Examiner).

Note: During the last two weeks of October 2004, Art Unit 2121 will move to  
Carlyle, Randolph Building, 5<sup>th</sup> floor and my phone and fax number will change to: 571-  
272-3685 and 571-273-3685, respectively. Similarly, Anthony Knight's phone and fax  
numbers will change to: 571-272-3687 and 571-273-3687.



Joseph P. Hirl

September 30, 2004



Anthony Knight  
Supervisory Patent Examiner  
Group 3600